IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Notice of Motion No. 2717 of 2005
in
Chamber Summons No.1072 of 2004
in
Execution Application No. 453 of 2003
in
Suit No.1341 of 1998

Jetu Jacques Taru Lalwani ..Petitioners

vs.

Shreeji Mineral Waters
Pvt.Ltd. and ors. ..Defendants

and

Ashok Mishrimal Parmar
and ors. ..Respondents

Shri N.K.Mudnaney for plaintiffs.
Smt.S.P.Trivedi i/b M/s A.Bharat & Co. for defendant no.1
Shri R.P.Pathak, S.O.Commissioner for Taking Accounts present.

CORAM: S.U.KAMDAR J.
5th OCTOBER, 2005

P.C.

. Motion is taken up on board forthwith.

. The present notice of motion is taken out for setting aside the order dated 9th August, 2005 in Chamber Summons No.1072 of 2004 in Execution Application No.453 of 2003. There is a decree in favour of the plaintiff of which he is seeking execution. Such execution has been obstructed by respondent no.1 in the present application. By

order dated 19th July, 2005 the learned Judge Khanwilkar J. granted 3 weeks time to file affidavit of examination in chief. The Advocate was appearing at that time. Inspite of the same no affidavit of examination in chief is filed. Thereafter the learned Judge gave final opportunity by order dated 9th August, 2005 to file the examination in chief on affidavit. Inspite of the same no affidavit is filed. Accordingly, the learned Judge was constrained to dismiss the Chamber Summons for non prosecution. The matter is now moved for setting aside that order. Even today, no affidavit for examination in chief is forthcoming from the respondent. From 9th August, 2005 almost two months have expired. It is clear that respondent no.1 is dodging the claim of the plaintiff and obstructing the execution of the decree. In my opinion, it is not in the interest of justice to permit the defendant to prolong the proceedings. The only ground which has been given is that the application was made to obtain the certified coy from the Corporation in respect of one of the documents. I find that such a ground is not satisfactory for the purpose of not filing the affidavit in examination in chief. It was open for respondent no.1 to apply for issuance of the witness summons. However, no steps have been taken. Respondent no.1 is deliberately obstructing

and resisting the claim of the plaintiff in execution of the decree. In that view of the matter, I do not see any reason to grant any relief in the present motion. Motion is dismissed. No order as to costs.